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of the United States

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NOTICE

Effective October 1, 1986, a new controlled vocabulary is being used to index the documents of GAO's Office of General Counsel. Changes in the vocabulary in this publication are reflected in the chapter titles and the index entries (headings). Copies of the vocabulary with introductory material explaining how to use the vocabulary to retrieve documents will be mailed early in 1987 to all individuals currently on GAO's distribution list for this publication.

PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which has been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code 3529 (formerly 31 U.S.C. 74 and 82d). Decisions in connection with claims are issued in accordance with 31 U.S. Code 3702 (formerly 31 U.S.C. 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, 98 Pub. L. 369, July 18, 1984.

Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text of these decisions are available through the circulation of individual copies and should be cited by the appropriate file number and date, e.g. B-219654, Sept. 30, 1986.

The remaining 10 percent of decisions rendered are published in full text. Copies of these decisions are available through the circulation of individual copies, the issuance of monthly pamphlets and annual volumes. Decisions appearing in these volumes should be cited by volume, page number and year issued, e.g., 65 Comp. Gen. 624 (1986).

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APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-221447** **June 1, 1987**

Relief

Physical losses

GAO decisions

Reconsideration

Request for reconsideration by Veterans Administration of prior decisions denying relief of accountable officer for unexplained loss of patient funds from two-part drop safe is granted where new evidence suggests that there was uncontrolled access to the bottom portion of the safe which provides an independent basis for relief.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Federal Assistance **B-223088** **June 1, 1987**

Grants

Refunds

Educational programs

Grantee under the Library Services Construction Act may be eligible for grant-backs of funds recovered by the Department of Education after final audit determinations under the General Education Provisions Act grant-back provision. 20 U.S.C. 1234e. These programs meet the two requirements of the statute and implementing regulations for eligibility. They satisfy the general definition of "applicable program" under the General Education Provisions Act and are subject to the Education Appeals Board's audit appeal jurisdiction.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-225006 June 1, 1987

Purpose availability

Lump-sum appropriation

Administrative discretion

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Purpose availability

Specific purpose restrictions

Publicity/propaganda

Internal Revenue Service lump-sum appropriation for processing tax returns can be used to fund limited amounts of promotional materials for United States savings bond campaigns if administratively determined to be appropriate. Such expenditures, which further governmental interests, are properly incidental to that appropriation.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227190 June 1, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official, and subsequent collection attempts are being pursued. However, in the future, we will deny relief if Army delays more than 3 months in processing the debit voucher.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government B-217439 June 2, 1987

Burden of proof

Since the claimant has not satisfied the burden of proof necessary to support his claim, claim for rent payments arising from a rental agreement between the claimant and the United States Army is denied. Z-2846403-089, Oct. 6, 1986, is affirmed.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Federal Assistance

B-224978 June 2, 1987

Grants

State/local assistance

Funding restrictions

We are unaware of any specific requirement or condition upon Department of Justice grant programs which would restrict a local unit of government from adopting a resolution supporting the provision of sanctuary to refugees. Whereas the resolutions do not permit or condone city officials acting outside the authorities incident to their offices, we cannot foresee what activities contemplated that would conflict with grant requirements. To the extent some conflict may exist, the Department must comply with established procedures for withholding grant funds.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-227218** **June 5, 1987**

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted DLA disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official, and subsequent collection attempts are being pursued. However, for cases involving notice of losses received after June 1, 1986, we will deny relief if there is a delay of more than 3 months in forwarding the debt to the collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers **B-227271** **June 5, 1987**

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official and his deputy under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute check, there was no indication of bad faith on the part of the disbursing official and his deputy, and subsequent collection attempts are being pursued. However, for cases involving notices of losses received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if Army delays more than 3 months in forwarding the debt to its collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

B-227289 June 5, 1987

Certifying officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army Finance and Accounting official under 31 U.S.C. 3528 from liability for certification of improper payment resulting from payee's negotiation of two substitute Treasury checks. The officer did not know and by reasonable diligence and inquiry could not have discovered that the payee had actually received two replacement checks and intended to cash both payment instruments. Proper procedures were followed in the certification of the substitute checks and adequate collection efforts are now being made. However, for cases involving notices of losses received after June 1, 1986, where the payee has left the Army of its employ, we will deny relief if the finance officer delays more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-223725 June 9, 1987

Purpose availability

Specific purpose restrictions

Watershed projects

Reclamation

In decision B-223725, February 20, 1987, we found that Plan 6, although approved by the Secretary of the Interior, is not a suitable alternative to the construction of Orme Dam and Reservoir, Central Arizona Project, which was authorized in section 301(a) of the Colorado River Basin Project Act, Pub. L. No. 90-537. However, we found no legal basis for objecting to the implementation of Plan 6 since the Congress had known about Plan 6 and passed appropriations which included the Central Arizona Project. Upon further review, we do not think that Plan 6 was authorized as a result of the appropriations process. Therefore, congressional authorization for Plan 6 should be obtained prior to the commencement of construction. Accordingly, B-223725, February 20, 1987, is modified.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227264 June 11, 1987
Disbursing officers
Relief
Illegal/improper payments
Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified military checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official, and subsequent collection attempts are being pursued.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227187 June 16, 1987
Disbursing officers
Relief
Illegal/improper payments
Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for two improper payments resulting from payee's negotiation of both original and substitute military checks. Proper procedures were followed in the issuance of the substitute checks, there was no indication of bad faith on the part of the disbursing official and subsequent collection attempts are being pursued. However, for cases involving notices of losses received after June 1, 1986, we will deny relief if Army delays more than 3 months in forwarding the debt to Army's collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226174 June 18, 1987
Cashiers
Relief
Illegal/improper payments
Forgeries

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Disbursing officers
Relief
Illegal/improper payments
Forgeries

U.S. Army Finance and Accounting Officer is relieved of liability for improper payment made by subordinate cashier since he maintained and supervised adequate system of procedures to prevent improper payments. Cashier is also relieved since she followed all existing procedures although such procedures were circumvented by payee who perpetrated a criminal scheme to obtain funds.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226214, et al.
Relief June 18, 1987
Physical losses
Embezzlement

Four Internal Revenue Service Center Directors are relieved from liability under 31 U.S.C. 3527(a) for losses that resulted from embezzlement by subordinates. Each Director was found to have an adequate system of procedures and controls that demonstrated the loss was not the result of director's negligence.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227288 June 18, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official, and subsequent collection attempts are being pursued. However, for notice of losses received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if Army delays more than 3 months in forwarding the debt to its collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-227428 June 18, 1987

Disbursing officers

Relief

Illegal/improper payments

Substitute checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official, and subsequent collection attempts are being pursued. However, for cases involving notices of losses received after June 1, 1986, where the payee has left the Army or its employ, we will deny relief if Army delays more than 3 months in forwarding the debt to its collection division.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-226572 June 25, 1987

Amount availability

Cost controls

Statutory restrictions

Watershed projects

Auburn Dam and Reservoir was authorized under Pub. L. No. 89-161, 79 Stat. 615, in 1965 as part of the Auburn-Folsom South Unit of the Central Valley Project, California. The Bureau of Reclamation of the Department of the Interior in April 1986 estimated the authorized construction ceiling, adjusted for inflation, to include approximately \$144 million because of subsequent legislative requirements. This amount should be deducted from the cost ceiling since the only basis for increasing it is for inflationary cost increases. There is no authority to do so because of additional requirements of subsequent legislation which do not provide additional authorization of appropriations. See B-223725, February 20, 1987.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226847 June 25, 1987

Cashiers

Relief

Physical losses

Theft

Imprest fund cashier is relieved of liability for loss of funds resulting from apparent theft. The pervasive laxity of office procedures was the proximate cause of the theft. Moreover, uncontrolled access to the funds provides an independent basis for relief.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

B-223726 June 26, 1987

Liability

Debt collection

National Aeronautics and Space Administration, George C. Marshall Space Flight Center (NASA/MSFC), requests an opinion as to the authority of NASA/MSFC to administratively offset amounts from the salaries of two MSFC employees for a joint debt of \$930 which the employees allegedly owe to the NASA Exchange System. In view of the limitations of the record presented, our letter reply does not address the validity of the debt which the employees are alleged to owe, nor do we advise NASA whether salary offset may be used to collect debts which are owed to the NASA Exchange System. The letter states that an agency must have regulations in place before an employee may be held liable for errors of judgment or neglect. We also mention the procedures for collections of debts from accountable officers.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Federal Assistance

B-225343 June 26, 1987

Government-insured loans

Repayment plans

Advance payments

Despite the general policy in Housing Act against displacement of tenants, there is no specific prohibition on accepting or requesting loan prepayments that would lead to displacement of tenants where prepayment would otherwise be authorized. It is unclear if conflicting policy under 42 U.S.C. 1472(b)(3), requiring refinancing or graduation whenever Secretary determines borrowers income of earning capacity would make him eligible for financing from private credit sources, applies to section 515 loans.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Claims Against Government B-221949 June 30, 1987

Vouchers

Voucher examination

Waiver

Miscellaneous expenses

GAO approves proposed amendment to Veterans Administration voucher payment system permitting the waiver of required review and documentation for unsupported invoices for up to \$35 in miscellaneous supplies provided to veterans in training programs authorized by 38 U.S.C. 1500-1521. For the purpose of future audits, the agency should be prepared to demonstrate that a significant number of inappropriate or false claims have not been revealed; that it will periodically review the \$35 limit; that it will assure that only proper claims have been submitted; and that it has in force adequate controls against processing multiple claims of \$35 each without appropriate documentation and review.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-221067 June 1, 1987

Leaves of Absence

Annual leave

Charging

Retroactive adjustments

AWOL

CIVILIAN PERSONNEL

Leaves of Absence

Annual leave

Lump-sum payments

Overpayments

Debt collection

Former employee claims backpay equal to amount agency deducted from her lump-sum leave payment to cover overpayments of pay for periods of alleged absence without leave. It is within agency's administrative discretion to place employees who refuse to comply with order to report to work on leave without pay. In view of the administrative discretion which exists with respect to determinations concerning absence from duty, and in the absence of any finding by an appropriate authority of an unjustified or unwarranted personnel action, her claim is denied.

CIVILIAN PERSONNEL**B-224074 June 1, 1987****Travel****Temporary duty****Per diem rates****Amount determination**

An FBI employee whose permanent duty station is in Philadelphia, Pennsylvania, was assigned temporary duty at the FBI Academy, Quantico, Virginia, to work on a highly sensitive investigation. While there, he was provided certain services such as lodging, meals and laundry privileges at Government cost. Since it is the responsibility of the Government agency involved to determine, in the first instance, the amount of reduced per diem allowance, if any, due the employee under these circumstances, we remand this claim to the agency for that determination.

CIVILIAN PERSONNEL**B-224636 June 1, 1987****Travel****Temporary duty****Per diem****Eligibility**

Agency's determination that employee cannot be paid per diem for temporary duty because her lodgings at the temporary duty site were also the residence or place of abode from which she commuted daily to her permanent duty station is sustained. Although the employee initially acted prudently in establishing a residence at the temporary duty site in view of her recurring assignments there, there is no explanation as to why she continued to lodge at the temporary duty site and commute to her permanent duty station after all temporary duty had ended. Accordingly, we cannot conclude that the agency's determination is incorrect. See FTR para. 1-7.6a and cases cited.

CIVILIAN PERSONNEL**B-222967 June 2, 1987****Compensation****Overtime****Eligibility****Military leave**

An employee of the Government Printing Office (GPO), after initially reporting for 14 days of active duty for training with his Air Force Reserve unit returned to GPO on the first day of his military duty and performed 7-1/2 hours of overtime work on a nonregularly scheduled day of work. Once an employee reports for active military duty he may not be paid for performing his normal civilian duties, since active military duty is incompatible with civilian service with the Government.

CIVILIAN PERSONNEL**Leaves of Absence****Military leave****Computation**

When an employee of a Government agency reports for active duty for training he should be placed in a military leave status on the first day for which he was regularly scheduled to work and continued in a military leave status until the last regularly scheduled workday, including intervening nonworkdays, such as holidays and weekends, occurring within his tour of active duty.

CIVILIAN PERSONNEL

B-225296 June 2, 1987

Relocation**Travel expenses****Constructive expenses****Privately-owned aircraft**

An employee who was authorized to perform permanent duty travel by privately owned automobile as advantageous to the Government but instead flew his privately owned airplane may be reimbursed his expenses only to the extent those expenses do not exceed the constructive cost of such travel by common carrier.

CIVILIAN PERSONNEL**Relocation****Travel expenses****Reimbursement****Eligibility**

An employee who was authorized to perform permanent duty travel by privately owned automobile as advantageous to the Government but instead flew his privately owned airplane may be reimbursed his expenses only to the extent those expenses do not exceed the constructive cost of such travel by common carrier.

CIVILIAN PERSONNEL**B-225351 June 2, 1987****Relocation****Temporary duty****Duty stations****Determination****CIVILIAN PERSONNEL****Travel****Temporary duty****Travel expenses****Duty stations****Establishment**

An employee's permanent duty station was to be relocated to larger quarters at a new site approximately two miles distant from the old duty station. Due to the need for extensive renovation of the new quarters, the employee and others were quartered at an interim location, which was closer to the employee's residence, for a period of 9 months. Upon the subsequent move to the newly renovated quarters, the employee claims entitlement to relocation expense reimbursement, contending that the interim move was a permanent change of station and that when the move was made to final destination, it increased his commuting distance more than 10 miles. The claim is denied. Whether an assignment to a particular location is temporary or permanent is a question of fact. In this case the record shows that the interim location was clearly a temporary duty station and that the employee's subsequent move to the renovated office space does not entitle him to relocation expenses.

CIVILIAN PERSONNEL**B-226641 June 5, 1987****Compensation****Occupational illnesses/injuries****Health insurance****Benefit determination****Private disputes**

An employee of the Federal Bureau of Investigation became totally disabled as the result of a work-related injury but was denied benefits under a privately administered insurance policy he had purchased through discretionary allotments of pay under 5 U.S.C. 5525 (1982). We advise the interested Senator that the employee's only recourse is to pursue his claim against the insurer, because regulations implementing 5 U.S.C. 5525 indicate that disputes arising from discretionary allotments must be resolved by the employee and the institution receiving the allotment without intervention by the government.

CIVILIAN PERSONNEL**B-213727.2 June 8, 1987****Leaves of Absence****Annual leave****Service credits****Military service****Computation**

Military retiree who works for the Department of the Interior and claims credit for all of his active military service during the Vietnam conflict for the purpose of annual leave accrual is only entitled to service credit in accord with the Office of Personnel Management's interpretation of the leave statute. That interpretation allows credit for annual leave accrual purposes only for that active military service performed during a war or in the area of a campaign or expedition for which a campaign badge has been authorized. Since the Vietnam conflict is not a war for this purpose, only the retiree's active service spent in the area of the Vietnam campaign or expedition is creditable service.

CIVILIAN PERSONNEL**B-223047 June 8, 1987****Compensation****Overtime****Eligibility****Burden of proof**

In accordance with the general rule cited in 48 Comp. Gen. 233 (1968), six Navy employees who crossed the international dateline in both directions while traveling between Hawaii and Guam may not receive basic pay or overtime compensation for work performed during regular work hours of the day gained due to crossing the dateline in an eastward direction. Nonpayment for the regular duty hours worked on the day gained is offset by the fact that they were paid 8 hours of basic pay for a workday lost in crossing the international dateline going west earlier during the same cruise.

CIVILIAN PERSONNEL**Compensation****Overtime****Eligibility****Non-workday travel****Justification**

Where Navy employee's travel westward across the international dateline results in the loss of a Saturday, the employee is entitled to overtime pay for all hours worked on a workday gained crossing the dateline while traveling eastward at end of the same assignment. Where employee loses a nonworkday going west, the workday gained going east is to be treated as a nonworkday added at the end of the employee's regularly scheduled workweek and work performed on that day is to be compensated at overtime rates. Since this is an extension of the principles stated in previous decisions, 48 Comp. Gen. 233 (1968) and 49 Comp. Gen. 329 (1969), it is to be applied prospectively.

CIVILIAN PERSONNEL**B-226620 June 8, 1987**

Compensation
Overpayments
Error detection
Debt collection
Waiver

An employee who transferred from a full-time to a part-time position received overpayments of salary for approximately 6-1/2 years because the agency failed to increase her deductions for health insurance upon her conversion to part-time status. Waiver of the overpayments is granted because there is no evidence that the employee was aware that her conversion to part-time status required an increase in her insurance deductions. Furthermore, although the agency deducted insurance premiums at the proper rate for an interval of 10 pay periods, the temporary change in deductions was not accompanied by any notification to the employee and she reasonably may not have noticed the slight difference in her pay.

CIVILIAN PERSONNEL**B-219845 June 9, 1987**

Relocation
Residence transaction expenses
Reimbursement
Eligibility
Time restrictions

Employee may not be reimbursed for real estate expenses incurred incident to settlement which took place 3 months beyond the maximum 3-year period within which real estate transactions must be completed under paragraph 2-6.2e of the Federal Travel Regulations. The fact that sale was delayed by actions of renters who remained in possession after they had ceased paying rent and had defaulted under terms of contract by which they agreed to purchase the employee's former residence does not toll the running of the 3-year period of limitation, which may not be waived or modified regardless of the circumstances responsible for the delayed settlement.

CIVILIAN PERSONNEL**B-225187 June 9, 1987****Travel****Actual subsistence expenses****Fraud****Allegation substantiation****Evidence sufficiency****CIVILIAN PERSONNEL****Travel****Actual subsistence expenses****Vouchers****Payments****Propriety**

A fraudulent claim for lodging taints the entire claim for per diem on days for which fraudulent information is submitted, and per diem payments will not be made for those days. Where fraud is suspected, the claim is of doubtful validity and the claimant is left to his remedy in the courts.

CIVILIAN PERSONNEL**B-227239 June 11, 1987****Compensation****Adverse personnel actions****Drugs****Testing**

Regardless of whether proposed language requiring that drug testing programs established pursuant to Executive Order 12564 comply with title 5 of the United States Code and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq. is added to the Supplemental Appropriations bill for fiscal year 1987, those laws and the protections developed thereunder would be applicable to Federal employees who test positive and are disciplined.

Cases developed under the Civil Service Reform Act, 5 U.S.C. 7513(a), suggest that drug abuse presumptively is a valid reason for disciplining employees whose work is critical to public safety, and that no direct evidence of job impairment need be demonstrated to justify disciplinary action.

CIVILIAN PERSONNEL**B-223876 June 12, 1987****Leaves of Absence****Annual leave****Accrual****Restrictions****Terminal leave**

An employee took approved annual leave for all of the next to last pay period of the leave year and for all workdays except the last administrative workday of the last pay period of the leave year and then retired. The lump-sum leave payment he received did not include credit for 16 hours of annual leave which had accrued for those two pay periods because the agency deemed it to be the granting of leave on leave in violation of the terminal leave restriction. The leave credit is allowed. Terminal leave occurs when leave is taken after the employee has performed his last day of active duty. Since the employee was present for and performed duty on the last administrative workday of the pay period in which he retired, such leave used immediately prior to that day is not violative of the terminal leave restriction. Aurora D. Rives, B-190374, January 20, 1978, distinguished.

Travel**Temporary duty****Travel expenses****Reimbursement**

Upon arrival at the airport an employee discovered that his ticket was not waiting for him but was at his agency travel office. After receiving instructions from his supervisor to proceed with payment for new ticket from personal funds, employee did so. An employee who pays for travel on official business with more than \$100 of personal funds, contrary to paragraph 1-10.2b of the Federal Travel Regulations and paragraph C4704 of Volume 2 of the Joint Travel Regulations which requires the use of a Government Transportation Request to procure passenger transportation costing in excess of \$100, may be reimbursed when receipt or other evidence of purchase is provided. Further, the employee may be reimbursed the amount he actually paid in excess of that which has already been reimbursed.

CIVILIAN PERSONNEL

B-223828 June 15, 1987

Travel

Actual subsistence expenses

Reimbursement

Amount determination

An employee on temporary duty (TDY) in a high rate geographical area in which he was authorized up to \$75 a day for subsistence, for his own convenience, traveled by private automobile instead of commercial airline. He lodged with a family member at no cost and only incurred meal expenses ranging between \$11 and \$33 per day. He claims the maximum actual subsistence reimbursement of \$75 per day authorized for the area. Employees authorized actual subsistence are to be reimbursed only for costs they actually incur and, therefore, this employee may not receive \$75 per day, but is limited to his actual expenses. This amount is then combined with the transportation expense computed on a mileage basis, and is reimbursed to the extent it does not exceed the constructive cost of the travel by commercial airline plus subsistence expenses. In this case the constructive subsistence expenses are the same as the actual subsistence expenses, not the maximum rate of \$75 per day.

CIVILIAN PERSONNEL

B-223407 June 18, 1987

Relocation

Residence transaction expenses

Reimbursement

Eligibility

Residency

Employee may be reimbursed real estate expenses incident to the sale of his residence at his old duty station even though he did not occupy the residence at the time of his permanent transfer since he would have been residing in the residence but for the action of the Government in assigning him to long-term temporary duty at the new duty station.

CIVILIAN PERSONNEL**B-223407 Con't****Relocation****June 18, 1987****Temporary quarters****Actual subsistence expenses****Reimbursement****Eligibility****CIVILIAN PERSONNEL****Relocation****Temporary quarters****Determination****Criteria**

Employee leased a house for the period of his temporary duty. At the end of his temporary duty he was converted to permanent duty but his lease required him to vacate the house. He may be paid temporary quarters subsistence expenses during the period he vacated the house and occupied an apartment where he reoccupied the house as soon as it became available since the record supports a determination that he intended to occupy the apartment only temporarily.

CIVILIAN PERSONNEL**B-226283 June 18, 1987****Compensation****Overpayments****Debt collection****Labor disputes****GAO review**

In accordance with 4 C.F.R. Part 22.7(b), GAO will not take jurisdiction of a union request for review of an employee's claim where the agency objects to GAO's consideration of the claim.

CIVILIAN PERSONNEL**B-224910 June 22, 1987****Compensation****Overpayments****Error detection****Debt collection****Waiver**

Employee received overpayments of pay because agency failed to deduct full insurance premiums from his pay. Overpayments may not be waived under 5 U.S.C. 5584. Record shows that the employee requested the insurance, was covered by the insurance, and was furnished a booklet which explained the coverage and applicable rates. Therefore, employee was partially at fault for not questioning the lack of sufficient deductions for insurance, and since he failed to effectively examine Earnings and Leave Statements provided by agency which would have alerted him to the error.

CIVILIAN PERSONNEL**B-202274 June 24, 1987****Compensation****Overpayments****Error detection****Debt collection****Waiver**

An employee on extended sick leave when his position was abolished on December 7, 1979, was carried in sick leave status until April 30, 1980, when he applied for a discontinued service retirement. Initially denied by OPM, the application for retirement was approved as of December 7, 1979, after GAO authorized a retroactive separation. The employee may be granted a partial waiver, representing the difference between the salary he received in the form of sick leave from December 7, 1979, to April 30, 1980, and the retroactive annuity payments he received for the same period. There is no indication that at the time he received it, he knew the payment of salary was or could become erroneous nor is there any indication of any fault, misrepresentation or lack of good faith on the employee's part. He remains liable for the amount of sick leave salary that was duplicated by the retroactive annuity payments.

CIVILIAN PERSONNEL**B-223737 June 24, 1987****Travel****Travel expenses****Reimbursement****Personal convenience****Employment agreements**

In response to a job announcement, an employee applied for and was accepted for a position in Guam. The job announcement and his travel orders authorized one round-trip vacation to Hawaii for the employee and his family at government expense. His claim for reimbursement for these vacation travel expenses is denied since (1) the government is not bound by employment offer, (2) the employee's rights are statutory and not contractual, and (3) there is no statutory authority for payment. The government is not bound by unauthorized acts of its agents, and the facts of this case do not contain equitable considerations that warrant our reporting the matter to Congress under the Meritorious Claims Act, 31 U.S.C. 3702(d) (1982).

CIVILIAN PERSONNEL**B-225305 June 24, 1987****Compensation****Rates****Determination****Highest previous rate rule**

An employee was transferred from a position with the United States Army in Panama, in grade CZ-6, step 2 (\$12,612), to a position with the United States Navy in Florida, in grade GS-6, step 1 (\$16,040). The employee asserts his pay should have been set at step 2 of his new grade, contending that Panama Area Personnel Board had set a higher pay scale in 1982 to become fully effective over 21 months beginning in January 1983. While the final part of that pay increase did not become effective until shortly after his transfer in September 1985, he claims credit for it for pay-setting purposes under highest previous rate rule. The claim is denied. Use of the highest previous rate rule applies only to the highest rate of basic pay actually received, not a prospective rate of pay an employee might have received had he remained in his former position. See Banaag S. Novicio, 64 Comp. Gen. 17 (1984).

CIVILIAN PERSONNEL
Compensation
Government claims
Debt collection
Set-off

B-223726 June 26, 1987

National Aeronautics and Space Administration, George C. Marshall Space Flight Center (NASA/MSFC), requests an opinion as to the authority of NASA/MSFC to administratively offset amounts from the salaries of two MSFC employees for a joint debt of \$930 which the employees allegedly owe to the NASA Exchange System. In view of the limitations of the record presented, our letter reply does not address the validity of the debt which the employees are alleged to owe, nor do we advise NASA whether salary offset may be used to collect debts which are owed to the NASA Exchange System. The letter states that an agency must have regulations in place before an employee may be held liable for errors of judgment or neglect. We also mention the procedures for collections of debts from accountable officers.

CIVILIAN PERSONNEL
Relocation
Residence transaction expenses
Reimbursement
Eligibility
Time restrictions

B-226352 June 29, 1987

An employee had 3 years from the date he reported for duty at his new station (August 21, 1983) to purchase a residence at his new duty station. On April 25, 1986, shortly before the third anniversary of that date, he applied for a Veterans Administration mortgage. However, the mortgage was not approved until September 25, 1986, and settlement took place on October 17, 1986, approximately 2 months after the expiration of the 3-year period. The employee is not entitled to reimbursement of his purchase expenses since his residence was not purchased within the 3-year period after his transfer permitted by Federal Travel Regulations paragraph 2-6.1e. The regulation has the force and effect of law and may not be waived or modified.

MILITARY PERSONNEL

MILITARY PERSONNEL

B-222331 June 23, 1987

Pay

Retirement pay

Post-retirement active duty

Restrictions

Under 10 U.S.C. 1331 members of the Reserve who reach age 60 and have the requisite years of creditable service may apply for and receive retired pay. Once a member has been granted retired pay under 10 U.S.C. 1331, however, he or she may not be retained on active duty or in active service under 10 U.S.C. 676.

PROCUREMENT

PROCUREMENT **B-225645.2 June 1, 1987**
Small Purchase Method **87-1 CPD 548**
Purchases
Competitive restrictions

PROCUREMENT
Specifications
Brand name specifications
Salient characteristics
Sufficiency

Defense Logistics Agency (DLA) need not develop detailed specifications for each of the numerous small purchases it conducts for other agencies, but need only insure that purchases are based on the maximum competition practicable which, in most situations, may be generated by no more than a brief purchase description. Where, however, DLA specifies a manufacturer's part number that on its face describes a nonstandard item and which, circumstances show, will preclude firms that have no way of knowing what it means from competing, DLA should attempt to secure a further description of the item.

PROCUREMENT **B-225684 June 1, 1987**
Competitive Negotiation **87-1 CPD 549**
Offers
Evaluation
Prices
Additional work/quantities

Where an offeror quotes a price for an unsolicited item in the solicitation's price schedule at the bottom of the list of solicited additive alternate items, the agency cannot assess the price of that unsolicited item in the price evaluation, if the agency is not acquiring the item and the item is not required to satisfy solicitation requirements.

PROCUREMENT
Sealed Bidding
Bids

B-225794 June 1, 1987
87-1 CPD 550

Responsiveness
Contractor liability
Liability restrictions

Bid for replacement of roof was properly rejected as nonresponsive where bidder took exception to solicitation's requirement for a manufacturer's labor and materials 10-year roofing guarantee by submitting statement from manufacturer disclaiming responsibility for defects attributable to defective workmanship during installation.

PROCUREMENT
Bid Protests

B-225804.3 June 1, 1987
87-1 CPD 551

GAO procedures
GAO decisions
Reconsideration

Request for reconsideration of decision denying protest is denied where protester fails to show any error of law or fact in original decision and instead relies solely on new argument which could have been but was not raised in initial protest.

PROCUREMENT
Sealed Bidding

B-225815 June 1, 1987
87-1 CPD 552

Invitations for bids
Terms
Liability insurance

In invitation for bids for operation of medical supply depot, contracting agency properly included general liability insurance requirements covering government buildings, equipment and inventory consisting of medical supplies and drugs with a total value of \$35.5 million to be entrusted to contractor, since contractor is principally engaged in government work; government property is involved; and the work is to be performed on a government installation.

PROCUREMENT**B-225815 Con't****Special Procurement****June 1, 1987****Methods/Categories****In-house performance****Cost evaluation****Government advantage****Allegation substantiation**

In cost comparison to determine whether to retain in-house or contract for operation of medical supply depot, the fact that insurance costs included in government cost estimate are considerably lower than premiums for commercial insurance which bidders are required to provide, due to government's self-insurance capability, does not make cost comparison defective or invalidate the insurance requirements.

PROCUREMENT**B-226133 June 1, 1987****Competitive Negotiation****87-1 CPD 553****Offers****Evaluation errors****Evaluation criteria****Application**

Protest alleging that agency improperly evaluated awardee's price for lease of office space is without merit when, contrary to protester's assumptions, agency included price for janitorial services in its evaluation, and the offer included moving costs.

PROCUREMENT**Competitive Negotiation****Offers****Price disclosure****Allegation substantiation****Evidence sufficiency**

Protester's bare allegation of improper price disclosure, without probative evidence, is insufficient to carry its burden of affirmatively proving its case. The General Accounting Office will not attribute improper action to contracting personnel on the basis of the protester's speculation that a reduction in its competitor's best and final offer was caused by such disclosure.

PROCUREMENT B-226270 June 1, 1987
Bid Protests 87-1 CPD 554
GAO Procedures
Interested parties
Direct interest standards

Protest is dismissed where protester is not an interested party since it would not be in line for award even if its protest were sustained.

PROCUREMENT B-226865 June 1, 1987
Contract Management 87-1 CPD 555
Contract administration
Subcontracts
GAO review

General Accounting Office (GAO) will not consider a claim arising from the alleged improper termination of a subcontract by the prime contractor/operator of a government plant because the claim involves contract administration and by law is for resolution by forums other than GAO.

PROCUREMENT B-226952 June 1, 1987
Competitive Negotiation 87-1 CPD 556
Discussion
Adequacy
Criteria

Protester was not prejudiced by contracting agency's failure to conduct oral discussions with it because agency representative visited all offerors' facilities, including the protester's; evaluated all as essentially equal; and no offeror was permitted to amend its proposal.

PROCUREMENT **B-226952 Con't**
Contractor Qualification **June 1, 1987**
Responsibility criteria
Distinctions
Performance specifications

Requirement in solicitation for radio maintenance services that the contractor ensure its technicians be factory certified by the manufacturer is a performance requirement and does not require the certificates as a precondition for award. Offeror's ability to comply with the requirement involves a matter of the offeror's general responsibility, not a definitive responsibility criterion.

PROCUREMENT **B-227141; B-227141.2**
Bid Protests **June 1, 1987**
GAO procedures **87-1 CPD 557**
Protest timeliness
Apparent solicitation improprieties

Protest that request for proposals contained vague and inappropriate selection standards, and that sealed bidding instead of negotiated procurement procedures should have been used, is untimely when filed after the closing date for receipt of initial proposals.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule
Adverse agency actions

Protest that contracting agency did not properly safeguard the protester's offer is untimely when filed later than 10 working days after basis of protest was known or should have been known.

PROCUREMENT B-227141; B-227141.2 Con:it
 Bid Protests June 1, 1987
 Non-prejudicial allegation
 GAO review

Protest that negotiations should have been reopened after 90-day offer acceptance period expired is dismissed where protester was not prejudiced.

PROCUREMENT B-224533.2 June 2, 1987
 Bid Protests 87-1 CPD 560
 GAO procedures
 GAO decisions
 Reconsideration

Prior decision is affirmed where reconsideration request does not show any error in fact or law of prior decision.

PROCUREMENT B-225738 June 2, 1987
 Sealed Bidding 87-1 CPD 562
 Bonds
 Justification
 GAO review

Although agencies generally should not require performance (and accompanying bid) bonds for other than construction contracts, bonding requirements are proper for nonconstruction contracts if needed to protect the government's interests.

PROCUREMENT**B-226171 June 2, 1987**

**Payment/Discharge
Payment withholding
Overdeductions
Interest**

Contractor whose funds have been withheld pending an investigation of alleged Davis-Bacon Act violations requests that interest be paid on the amount withheld in excess of the payments to be disbursed to the wage claimants. There is no specific provision of the Davis-Bacon Act authorizing the payment of interest on money refunded to the contractor from withheld funds after payment to the wage claimants is made. Accordingly, absent a provision in the contracts to the contrary, there is no authority to pay interest on the excess funds withheld in this case.

PROCUREMENT**B-226185 June 2, 1987**

**Bid Protests
Evidence evaluation
Factual issues
Discrepancies
Burden of proof**

87-1 CPD 563

When the only evidence on an issue of fact is a protester's statement that conflicts with that of contracting officials, the protester has not carried its burden of proof.

PROCUREMENT

**Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties**

Protests of solicitation's requirements are untimely if not filed prior to closing.

PROCUREMENT

B-226185 Con't

Competitive Negotiation

June 2, 1987

Offers

Competitive ranges

Exclusion

Administrative discretion

Protest against exclusion of proposal from competitive range based on numerous informational deficiencies, the correction of which would have required a major revision to proposal, is denied where agency's technical evaluation had a reasonable basis.

PROCUREMENT

Socio-Economic Policies

Small businesses

Competency certification

Applicability

Certificate of Competency (COC) procedures do not apply when a small business firm's offer in a negotiated procurement is considered weak under technical evaluation factors relating to experience and past performance since the COC program is reserved for reviewing nonresponsibility matters, not the comparable evaluation of technical proposals.

PROCUREMENT

Bid Protests

Allegation substantiation

Lacking

GAO review

B-226991 June 2, 1987

87-1 CPD 564

PROCUREMENT

Sealed Bidding

Contract awards

Pre-qualification

Contractor personnel

Investigation

Assuming, as protester contends, that contracting agency directed protester to discharge specific employee as a condition of receiving prior contract because of pending criminal investigation involving the employee, once protester became aware that investigation had been completed without charges being filed, it no longer was reasonable to assume that it was precluded from rehiring the employee in connection with following year's contract for the same services where there is no indication that contracting agency ever advised protester that alleged prohibition on hiring the employee extended to subsequent procurements.

PROCUREMENT

Bid Protests

Private disputes

GAO review

Contention that awardee obtained unfair competitive advantage in preparing its bid by virtue of employing protester's former employee involves dispute between private parties which does not provide a basis for bid protest.

PROCUREMENT B-227255 June 2, 1987
 Bid Protests 87-1 CPD 565
 GAO procedures
 Protest timeliness
 10-day rule
 Effective dates

Where protester is on notice, from Commerce Business Daily synopsis, of the intended dates of issuance and closing of a solicitation, a protest alleging that the Air Force failed to provide it with a requested copy of the solicitation is untimely when it is not filed until a month after the announced closing date.

PROCUREMENT B-225682 June 3, 1987
 Competitive Negotiation 87-1 CPD 566
 Alternate offers
 Acceptance
 Propriety

Protest that contracting officer should have considered protester's alternate proposal is denied because the solicitation did not permit consideration of alternate offers.

PROCUREMENT
 Competitive Negotiation
 Offers
 Evaluation
 Technical acceptability

PROCUREMENT
 Competitive Negotiation
 Offers
 Technical acceptability
 Negative determination
 Propriety

There is no basis to question an agency's decision to reject a technically unacceptable proposal rather than conduct discussions where the contracting officer properly concluded that the proposal was not capable of being made acceptable through discussions.

PROCUREMENT
Sealed Bidding
Bids

B-225702 June 3, 1987
87-1 CPD 567

Responsiveness
Level-pricing clauses
Compliance

Bid that included one price for the base quantity and increased prices for out year requirements, in derogation of solicitation provision providing that prices for out year requirements are not to exceed price for base quantity, may be considered notwithstanding solicitation provision stating that such bids will be nonresponsive where the record shows that the second-low bid would not have been low, even if the bidder were permitted to unlevel its bid in the same manner.

PROCUREMENT
Sealed Bidding
Contract awards

B-226949 June 4, 1987
87-1 CPD 569

Multiple/aggregate awards
Additional work/quantities
Propriety

Protest that agency improperly denied contract to low bidder on four base bid items of five-item construction solicitation is dismissed where record shows that the award was consistent with provision, incorporated by reference in the solicitation, which requires award to the lowest aggregate bidder, including additives and deductives, and protester is not low when additive item price is included.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-227005 June 4, 1987
87-1 CPD 570

PROCUREMENT
Socio-Economic Policies
Small businesses
Responsibility
Competency certification
GAO review

Where contracting officer's improper rejection of low small business offeror as nonresponsible without referring the matter to the Small Business Administration for certificate of competency consideration is cured by subsequent referral to SBA, protest is moot and need not be considered, as SBA has conclusive authority to determine a small business' responsibility.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration
Additional information

B-225397.2; B-225398.2
June 5, 1987
87-1 CPD 571

Request for reconsideration is denied where based on arguments that could have been, but were not, raised by protester in course of original protest.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-225519.4 June 5, 1987
87-1 CPD 572

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

Protester's claim for damages is denied where the contracting officer had a reasonable basis to cancel a negotiated procurement.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Cancellation
Bad faith
Allegation substantiation

Protest that the contracting officer canceled a negotiated procurement in bad faith is denied, where the protester has provided no evidence to support its allegation, there is no indication of any bad faith actions in the record, and the cancellation, in fact, had a reasonable basis.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Cancellation
Justification
GAO review

Contracting officer had a reasonable basis to cancel a negotiated procurement after initial proposals had been submitted, where request for proposals (RFP) to fulfill agency's natural gas requirements at military base for a 2-year period required offerors to provide monthly cost estimates but did not contain monthly gas consumption estimates and the RFP did not correctly state how proposed costs would be evaluated.

B-225755 June 5, 1987

87-1 CPD 573

Small businesses

Competency certification

Bad faith

Allegation substantiation

Burden of showing that Small Business Administration (SBA) acted in bad faith is not met where the record shows that the SBA granted the protester two extensions to the deadline for filing for a certificate of competency, and the protester's assertion that the SBA granted a further extension and failed to honor it is unsupported.

PROCUREMENT

Socio-Economic Policies

Small businesses

Competency certification

Extension

Administrative discretion

The granting of an extension for filing a certificate of competency application is a matter within the discretion of the Small Business Administration and the contracting agency, with the government's interest in proceeding with the acquisition, not the offeror's interest in obtaining an extension, is controlling.

PROCUREMENT

B-225813 June 5, 1987

Bid Protests

87-1 CPD 574

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest based upon several alleged solicitation defects that were apparent prior to the closing date for receipt of initial proposals is untimely when not filed prior to the closing date for receipt of initial proposals.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

B-225813 Con't

June 5, 1987

Untimely protest will not be considered under the significant issue exception to the General Accounting Office's (GAO) timeliness rules, where the issues raised are ones that the GAO routinely considers in the past.

PROCUREMENT

Bid Protests

GAO procedures

Purposes

Competition enhancement

The General Accounting Office (GAO) generally will not consider a protest that alleges the protester is entitled to a sole-source award because the objective of GAO's bid protest function is to insure full and open competition.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

B-226567 June 5, 1987

87-1 CPD 575

Protest alleging that solicitation contained several deficiencies and that amended closing date allowed offerors insufficient time to revise and submit proposals is untimely when filed after date set for submission of initial proposals.

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PROCUREMENT

B-227269 June 5, 1987

Contract Management

87-1 CPD 577

Contract administration

Options

Use

GAO review

A contracting agency's decision not to exercise an option involves a matter of contract administration that the General Accounting Office does not review.

PROCUREMENT

B-212529 June 8, 1987

Payment/Discharge

Unauthorized contracts

Quantum meruit/valebant doctrine

On reconsideration, decision in B-212529, May 31, 1984, is affirmed. The Nuclear Regulatory Commission (NRC) may not reimburse the Institute of Electrical and Electronic Engineers (IEEE) for expenses the IEEE incurred in preparing to carry out a laboratory accreditation program which the NRC later abandoned before performance was completed. The doctrine of quantum meruit is inapplicable because the Government did not receive a benefit from the activities of IEEE.

PROCUREMENT

Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-225517.2 June 8, 1987
87-1 CPD 578

PROCUREMENT

Sealed Bidding
Bids
Responsiveness
Price omission
Line items

General Accounting Office (GAO) affirms its prior decision sustaining protest that awardee's bid was nonresponsive since section of solicitation schedule which awardee had deleted in its bid by drawing a series of diagonal lines across it contained a material requirement and the deletion of that requirement indicated the bidder was not bound to perform work.

PROCUREMENT

Bid Protests
GAO procedures
Preparation costs

PROCUREMENT

Sealed Bidding
Bids
Preparation costs

Even though GAO recommends that award be made to the protester for the remaining period of the contract term, the protester's cost of filing and pursuing its protest may be allowed since the protester has lost the opportunity to perform more than 6 months of the contract period.

PROCUREMENT

B-225685 June 8, 1987

Competitive Negotiation

87-1 CPD 579

First-article testing

Prior contractors

Waiver

Propriety

An agency's decision not to waive a first article testing requirement is reasonable where firm has not produced the item in over 2 years and first articles produced for previous contract were not approved by agency. Further, decision to grant waiver to another firm is reasonable where the firm recently obtained conditional approval of a first article under another contract.

PROCUREMENT

Noncompetitive Negotiation

Use

Justification

Urgent needs

Protest against agency's failure to solicit past supplier of aircraft wing tips is denied where agency's requirement was of an unusual and compelling urgency such that limiting competition to firms qualifying for first article waiver was essential to meeting the required delivery schedule and the protester was not eligible for waiver.

Protest that urgent situation requiring other than competitive procedures was a result of a lack of agency advance planning is denied where agency engaged in planning by attempting to award contracts to fill its requirements but agency plans did not yield the expected results.

PROCUREMENT

B-225769 June 8, 1987

Sealed Bidding

87-1 CPD 580

Bids

Responsiveness

Brand name/equal specifications

Salient characteristics

PROCUREMENT

Sealed Bidding

Contract awards

Propriety

Award to bidder offering a brand name product is improper where that product, without additional equipment not mentioned in awardee's bid, is non-responsive to the salient characteristics set forth in the solicitation.

PROCUREMENT

B-227365 June 8, 1987

Bid Protests

87-1 CPD 581

GAO procedures

Interested parties

An association that represents federal employees is not an interested party to protest the contracting agency's decision to contract for services rather than perform them in-house, since the association is not an actual or prospective offeror under the challenged solicitation.

PROCUREMENT**B-226992 June 9, 1987****Specifications****87-1 CPD 582****Minimum needs standards****Competitive restrictions****Allegation substantiation****Evidence sufficiency**

Protest that a contracting agency's minimum needs are overstated and restrictive of competition is denied where the protester is unable to show that the agency's determination that changed circumstances required an increase in the minimum capacity of the washing machines and dryers bidders could offer and an imposition of a restriction on the maximum age of the machines at the time of contract installation was unreasonable.

PROCUREMENT**B-226972 June 10, 1987****Sealed Bidding****87-1 CPD 583****Bids****Clerical errors****Error correction****Propriety**

Protest that the contracting agency improperly allowed correction of an apparent clerical error in a firm's low bid after bid opening is denied where examination of low bid reveals that clerical mistake as corrected by the agency was obvious in nature and could be readily corrected by applying standard mathematical calculation and where it was clear that a mistake had been made, how it was made, and what the bidder had intended to bid.

PROCUREMENT**B-226972 Con't****Sealed Bidding****June 10, 1987****Contract awards****Propriety****Contractor substitution****Corporate entities**

Where a partnership submits a low bid and informs the agency after bid opening that its application for incorporation was approved by the state, a protest of the award to the new corporation based on the general rule that the entity awarded the contract must be the entity that submitted the bid is denied since an exception to the general rule permits the transfer of rights and obligations arising out of a bid when the transfer is to a legal entity which is the complete successor in interest to the bidder.

PROCUREMENT**B-227265 June 10, 1987****Special Procurement Methods/Categories****Computer equipment/services****Federal supply schedule****Non-mandatory purchases**

Use of a multiple award schedule (MAS) contract by agency in the procurement of teleprocessing services under General Services Administration Teleprocessing Services Program (TSP), is not mandatory under the Federal Information Resources Management Regulation (FIRMR), or the TSP Handbook. Agency's MAS use is permissible as a "competitive procedure" under the Competition in Contracting Act and FIRMR provided that use of the MAS will result in the lowest overall cost to the government.

PROCUREMENT**B-225579.2 June 11, 1987****Bid Protests****87-1 CPD 584****GAO procedures****GAO decisions****Reconsideration****Additional information**

General Accounting Office Bid Protest Regulations do not permit a piecemeal presentation of evidence, information or analysis. Thus, where protester presents no evidence that the information on which it bases its reconsideration request could not have been presented prior to the closing of the original protest record, the request for reconsideration will not be considered.

PROCUREMENT**B-226479 June 11, 1987****Sealed Bidding****Bids****Responsiveness****Additional work/quantities****Price omission**

Where bidder who was unwilling to include in its lump-sum price for the removal and disposal of chemically-contaminated materials that portion of the work whose extent could not be determined until during contract performance, and expressly so conditioned its bid, agency properly rejected bid as nonresponsive since it did not offer to perform the work described by the specifications for a firm, fixed price.

PROCUREMENT**B-226507 June 11, 1987****Sealed Bidding****87-1 CPD 585****Bids****Responsiveness****Acceptance time periods****Deviation**

Bid was properly rejected as nonresponsive where cover letter enclosed with bidder's acknowledgment of amendment to solicitation stated that bid was for acceptance within 30 days, whereas solicitation required 60-day bid acceptance period. It is irrelevant that bidder did not alter acceptance period stated on the solicitation cover page, or that bidder did not insert the shorter acceptance period in space provided in Minimum Bid Acceptance Period Clause since the clause only permits bidder to specify a longer acceptance period than is required by the solicitation.

PROCUREMENT**B-226826 June 11, 1987****Contract Management****Federal Procurement regulations/laws****Revision****Government property****Use**

General Accounting Office has no objection to a proposal to add to the Federal Acquisition Regulation (FAR) a new FAR Subpart 51.3 and a new contract clause at FAR 52.251-3, both of which concern the use by government contractors of the government's discount air passenger transportation rates.

PROCUREMENT**B-226977 June 11, 1987****Socio-Economic Policies****Small business set-asides****Use****Administrative discretion**

Contracting officer did not abuse her discretion in not setting aside a particular procurement for small business concerns where, at the time the determination was made, she had no reasonable expectation that offers from two responsible small business concerns would be received.

PROCUREMENT**B-227017 June 11, 1987****Sealed Bidding****87-1 CPD 586****Invitations for bids****Amendments****Acknowledgment****Responsiveness**

An amendment which incorporates into the invitation for bids the Anti-Kickback Procedures clause implementing the recently enacted Anti-Kickback Act of 1986, 41 U.S.C.A. 51-58 (West Supp. 1987) is material since it imposes legal obligations on the contractor that were not contained in the original solicitation, and thus rejection of the bid as nonresponsive for failure to include acknowledgment of receipt of the amendment is proper.

A bidder's failure to acknowledge receipt of a material amendment renders the bid nonresponsive; the fact that the bidder may not have received the amendment until the day after bid opening is irrelevant where agency states it mailed amendment to bidders 3 weeks prior and in the absence of evidence that the failure to timely receive the amendment resulted from a deliberate attempt by the contracting agency to exclude the firm from the competition.

B-227212 June 11, 1987

87-1 CPD 587

GAO procedures

Interested parties

Direct interest standards

Fifth low offeror is not an interested party to protest an award to an allegedly noncomplying offeror. Even if the protest were sustained the protester would not be in line for award.

B-227360 June 11, 1987

87-1 CPD 588

GAO procedures

Protest timeliness

Apparent solicitation improprieties

Protest is untimely where bases for protest were apparent prior to closing date for submission of proposals but protest was not filed until 3-1/2 months thereafter.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Significant issue exemptions

Applicability

Untimely protest will not be considered under "significant issue" exception to timeliness rules when protest does not raise issue of first impression which would have widespread interest to the procurement community.

PROCUREMENT B-225710; B-226897
Specifications June 12, 1987
Minimum needs standards 87-1 CPD 589
Competitive restrictions
Performance specifications
Overstatement

Protest that low temperature and noise level test requirements for aircraft hydraulic system test stands are impossible to meet and unduly restrictive is sustained where the record supports the protester's contention that the requirements have never been met, and the agency does not establish that they are necessary to meet its minimum needs.

PROCUREMENT B-225807 June 12, 1987
Sealed Bidding 87-1 CPD 590
Bid guarantees
Responsiveness
Signatures
Sureties

Where factual question arises as to the identity of the surety's agent who signed bond because notarized certification attached to bond does not indicate full name of surety's agent, but evidence in existence prior to bid opening is available in agency's contracting file to establish that signatory to bond is proper agent of surety, bid should not be rejected as nonresponsive.

PROCUREMENT B-226626 June 12, 1987
Contractor Qualification 87-1 CPD 591
Organizational conflicts of interest
Allegation substantiation
Evidence sufficiency

Contracting agency reasonably determined that a potential conflict of interest existed and properly excluded the protester from competing for a contract to appraise utility property for negotiation to sell agency's interest in the utility where the protester has performed auditing services involving the same property for the buyer.

B-226981 June 12, 1987

87-1 CPD 592

Minimum needs standards

Competitive restrictions

Performance specifications

Justification

Protest that agency's procurement of sewer repair services unduly restricts competition because only one repair process is requested is denied where agency has convincingly justified its requirement and protester has failed to show how its sewer repair process will not disrupt the security needs of the agency because of the necessity of excavations in a secure area. Moreover protester's repair process will diminish sewer pipe flow which is presently at 100 percent capacity.

B-225447.3 June 15, 1987

87-1 CPD 594

GAO procedures

GAO decisions

Reconsideration

Prior decision is affirmed on reconsideration where protester merely reiterates previously denied arguments and has not shown any error of fact or law that would warrant reversal or modification of previous decision.

B-225727 June 15, 1987

Contractor Qualification 87-1 CPD 595

Responsibility/responsiveness distinctions

Approved sources

Compliance time periods

Where solicitation clause provides that qualification of product may be completed up to time of award, compliance with clause is matter of responsibility, not responsiveness, and detailed information on product qualification, if needed, may be provided to agency any time before award.

PROCUREMENT

**Sealed Bidding
Bids**

B-225727 Con't

June 15, 1987

Responsiveness

Approved sources

Identification

Failure by bidders to identify precisely the products they were bidding under qualified products requirement does not render bids nonresponsive where the bidders took no exception to solicitation requirement that products be qualified.

PROCUREMENT

Contractor Qualification

B-227333 June 15, 1987

87-1 CPD 596

Responsibility

Information

Submission time periods

PROCUREMENT

Contractor Qualification

Responsibility/responsiveness distinctions

Agency may award to firm which does not have Food and Drug Administration (FDA) permission to market its product at the time of bid opening since compliance with solicitation requirement for FDA approval is a matter of responsibility which may be determined after bid opening.

PROCUREMENT
Noncompetitive Negotiation
Use
Justification
Industrial mobilization bases

PROCUREMENT	B-225982.5	June 16, 1987
Bid Protests	87-1	CPD 598
GAO procedures		
Protest timeliness		
10-day rule		
Reconsideration motions		

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PROCUREMENT **B-225982.5 Con't**
Competitive Negotiation **June 16, 1987**
Offers
Organizational experience
Evaluation
Propriety

In evaluating corporate experience, contracting agency may consider offeror's recent experience on particular projects, since projects are illustrative examples of the offeror's experience. Moreover, contracting agency properly considered offeror's very recent experience (gained after issuance of solicitation) on three agency projects which offeror first mentioned in its best and final offer, since corporate experience evaluation factor fairly encompasses any experience that the contracting agency reasonably believes the corporation may draw on in the event that it receives the award.

PROCUREMENT **B-227818 June 16, 1987**
Bid Protests **87-1 CPD 599**
GAO procedures
Protest timeliness
Apparent solicitation improprieties

Contention that contracting agency allowed insufficient time for submission of proposals after issuance of a significant amendment to the solicitation is untimely where not raised before proposal due date.

PROCUREMENT
Competitive Negotiation
Hand-carried offers
Late submission
Acceptance criteria
Acceptance

B-227818 Con't
June 16, 1987

Contracting agency acted properly in refusing to consider late hand-delivered proposal where late delivery was due solely to protester's actions. Statutory requirement that contracting agency solicit as many sources as practicable when using other than competitive procedures does not require acceptance of late hand-delivered proposal, which may be accepted only where late delivery is due to improper governmental action.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-227830 June 16, 1987
87-1 CPD 600

Protest filed after bid opening contending that the procurement was improperly set aside for small business is untimely and will not be considered.

PROCUREMENT
Socio-Economic Policies
Small businesses
Contract award
Sole sources
Propriety

Contention that contracting agency is required to withdraw a small business set-aside after bid opening where allegedly only one responsive small business bid is received is without merit because agency may properly make award to a sole small business bidder in such circumstances.

PROCUREMENT
Bid Protests
GAO procedures
Preparation costs

B-221889.2 June 17, 1987
87-1 CPD 601

PROCUREMENT
Sealed Bidding
Bids
Preparation costs

A protester is entitled to be reimbursed for its reasonable bid preparation costs and the costs of filing and pursuing its protest where acceptance of the recommendation for corrective action became impracticable because the agency never suspended performance on the contract it had awarded as required by law and the work had been almost completed during the agency's consideration of the recommendation.

PROCUREMENT
Socio-Economic Policies
Small businesses
Competency certification
Effects

B-225445.2 June 17, 1987
87-1 CPD 602

Where the contracting officer refers a nonresponsibility determination to the Small Business Administration (SBA) under the certificate of competency (COC) procedures, and SBA does not notify the agency of its intended issuance of a COC within the prescribed time period, but the contracting officer nevertheless receives such advice from the SBA prior to taking any contract action, the agency is bound by the COC determination and must make award to the low, responsive, responsible bidder as certified by the SBA.

PROCUREMENT
Competitive Negotiation
Discussion
Determination

B-225734 June 17, 1987
87-1 CPD 603

PROCUREMENT
Competitive Negotiation
Offers
Clerical errors
Error correction
Propriety

Agency properly clarified minor irregularity in awardee's price proposal when the more reasonable interpretation was that offeror made a clerical error in entering either or both of two component construction prices rather than a mistake in entering the subtotal, since if interpreted as a mistake in entering the subtotal the offer would exceed and be inconsistent with the construction cost limit of the RFP. Clarification of such a minor irregularity to correct this clerical mistake does not constitute discussions, requiring the opening of discussions with the other offerors in the competitive range.

PROCUREMENT
Competitive Negotiation
Offers
Clerical errors
Error correction
Propriety

Clarification conducted by agency with successful offeror to correct clerical error was not prejudicial to protester whose proposal contained substantial qualifications of and deviations from request for proposals, since in a negotiated procurement any proposal that fails to conform to material terms and conditions of the solicitation should be considered unacceptable, and may not form the basis for award.

PROCUREMENT

B-226714 June 17, 1987

Bid Protests

87-1 CPD 605

Allegation substantiation

Lacking

GAO review

Protest that selected firm is less qualified than the protester is denied where record does not demonstrate that the agency's evaluation of proposals was unreasonable.

PROCUREMENT

Contractor Qualification

Contractor personnel

GAO review

General Accounting Office generally will not review the qualifications of contracting personnel.

PROCUREMENT

Special Procurement Methods/Categories

Architect/engineering services

Offers

Evaluation criteria

Application

Protest that agency evaluation was inconsistent with published evaluation criteria because the agency used unpublished subfactors in evaluating proposals is denied where the only subfactors used were encompassed by the advertised evaluation criteria.

PROCUREMENT**B-226965.2 June 17, 1987****Sealed Bidding****87-1 CPD 606****Bids****Clerical errors****Error correction****Propriety**

Where workpapers contain clear and convincing evidence that the low bidder mistakenly omitted certain costs from its bid, the bid may be corrected upward to reflect such costs. Since the corrected bid would remain low, award properly may be made on the basis of the corrected bid.

PROCUREMENT**B-226985.2, et al.****Contractor Qualification****June 17, 1987****Responsibility****87-1 CPD 607****Contracting officer findings****Affirmative determination****GAO review**

Dismissal of protest against the procuring agency's affirmative determination of the awardee's responsibility, where the protester questioned whether the awardee will comply with the specifications, is affirmed.

PROCUREMENT**B-227094 June 17, 1987****Bid Protests****87-1 CPD 608****Moot allegation****GAO review**

Protest against specifications, which have been deleted from the solicitation, is moot and is dismissed.

PROCUREMENT
Bid Protests
Premature allegation
Future procurement
GAO review

B-227094 Con't
June 17, 1987

Protest that agency may in the future award a contract to a higher cost offeror is premature and is dismissed.

PROCUREMENT
Bid Protests
Allegation substantiation
Lacking
GAO review

B-227308 June 17, 1987
87-1 CPD 609

Allegation that bid was below cost does not provide a sustainable basis of protest.

PROCUREMENT
Bid Protests
Antitrust matters
GAO review

Possible violation of anti-trust laws is properly for consideration by the Department of Justice, not by the General Accounting Office.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-225479.3 June 18, 1987
87-1 CPD 610

Protest that agency should have offered the opportunity for a live test demonstration only to the highest-ranked offeror, rather than to all offerors in the competitive range, is untimely where filed more than 10 working days after protester knew that all offerors would have such an opportunity.

PROCUREMENT

B-225479.3 Con't

Competitive Negotiation

June 18, 1987

Below-cost offers**Acceptability****PROCUREMENT****Contractor Qualification****Responsibility****Contracting officer findings****Affirmative determination****GAO review**

Agency's acceptance of a below-cost, fixed price proposal from a responsible offeror is not legally objectionable. When a contracting officer makes an affirmative determination of responsibility, the General Accounting Office will not review it absent a showing that the determination may have been made fraudulently or in bad faith, or that definitive responsibility criteria were not met.

PROCUREMENT**Competitive Negotiation****Offers****Evaluation****Technical acceptability****Tests**

Protest that contracting agency improperly considered the results of a live test demonstration in calculating final technical scores is without merit where the demonstration relates to specific solicitation requirements and the solicitation specifically stated that the test would assist the government in making final technical evaluations.

PROCUREMENT
Socio-Economic Policies
Small businesses
Size determination
GAO review

B-225479.3 Con't
June 18, 1987

The Small Business Administration is empowered conclusively to determine matters of size status for federal procurement purposes, and the General Accounting Office will neither make nor review such determinations. Allegation that small business offeror is in collusion with large business is therefore dismissed.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-227126.2 June 18, 1987
87-1 CPD 611

PROCUREMENT
Bid Protests
Premature allegation
Future procurement
GAO review

Request for reconsideration is dismissed where initial protest of alleged solicitation defects was filed after bid opening, and is untimely, and protester's request for reconsideration concerns compliance with hazardous waste disposal which is outside bid protest function and also protests anticipated terms of solicitations not yet issued which is premature.

B-227305.2 June 18, 1987
87-1 CPD 612

PROCUREMENT B-227418 June 18, 1987

- Bid Protests
 - GAO procedures
 - Protest timeliness
 - 10-day rule
 - Adverse agency actions

PROCUREMENT B-227454 June 18, 1987
 Bid Protests
 Administrative policies
 Violation
 GAO review

Bid protest function of the General Accounting Office is reserved for considering timely raised allegations concerning whether an award or proposed award of a specific contract complies with statutory, regulatory and other legal requirements. Consequently, GAO, as part of its bid protest function, does not consider general allegations concerning the overall conduct, business philosophy or policies of an agency.

PROCUREMENT **B-227454 Con't**
Bid Protests **June 18, 1987**
Information disclosure
Administrative determination
GAO review

The General Accounting Office has no authority under the Freedom of Information Act to direct a contracting agency to release documents to a protester.

PROCUREMENT **B-225714.2 June 19, 1987**
Bid Protests **87-1 CPD 613**
Bias allegation
Allegation substantiation
Burden of proof

A protester has the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Significant issue exemptions
Applicability

General Accounting Office will not consider the merits of an untimely protest by invoking the significant issue exception of the Bid Protest Regulations where the protest does not raise one or more issues of first impression that would have widespread significance to the procurement community; an allegation of bias that is unsupported by the record does not raise such an issue.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Adverse agency actions

B-225714.2 Con't

June 19, 1987

Protest to contracting agency which was not filed within 10 days of debriefing in which protester learned that its proposal would not be considered within the competitive range was untimely, and any subsequent protest to General Accounting Office is also untimely.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

B-226719 June 19, 1987

87-1 CPD 614

Protest of solicitation cancellation raised 2 months after the cancellation is untimely under General Accounting Office Bid Protest Regulations and will not be considered.

PROCUREMENT

Special Procurement Methods/Categories

Federal supply schedule

Off-schedule purchases

Justification

Low prices

Protest that agency should have placed order against nonmandatory Federal Supply Schedule contract is denied where agency solicited oral quotations under small purchase procedures and another firm submitted lower price.

PROCUREMENT

B-226756 June 19, 1987

Bid Protests

87-1 CPD 615

GAO procedures

Interested parties

Direct interest standards

Protester who alleges that two lowest bids ought to be rejected as nonresponsive is not an interested party under General Accounting Office's Bid Protest Regulations because protester, as the fourth low bidder, is not next in line for award if the protest were sustained.

PROCUREMENT

B-227037.3 June 19, 1987

Bid Protests

87-1 CPD 617

GAO procedures

GAO decisions

Reconsideration

Decision dismissing protest is affirmed where protester's request for reconsideration does not show that the dismissal was factually or legally wrong.

PROCUREMENT

B-227401 June 19, 1987

Competitive Negotiation

87-1 CPD 618

Offers

Price reasonableness

Determination

Administrative discretion

A contracting officer's determination concerning price reasonableness is a matter of administrative discretion which will not be questioned unless there is a showing that the determination itself is unreasonable or that it is based on bad faith or fraud. The cancellation of another, unrelated procurement for a different item because prices received were considered to be unreasonable is not evidence that the contracting officer's judgment was unreasonable under the current solicitation.

Where, as a result of the filing of a protest with the General Accounting Office, award of contract was delayed until the fiscal year following that in which the procurement was competed, there is no requirement that the procurement be recompeted since agency properly obtained funding for the contract under the current fiscal year's appropriations act and an extension of the proposed awardee's acceptance date.

Request for reconsideration is denied where protester basically reiterates arguments previously made and fails to identify any errors of law or fact on which the decision was based.

PROCUREMENT
Competitive Negotiation
Offers
Preparation costs

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PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

Apparent solicitation improprieties

B-225798 Con't

June 23, 1987

Protest against amended solicitation award scheme filed after closing date established by the amendment is untimely.

PROCUREMENT

Competitive Negotiation

Contract awards

Administrative discretion

Cost/technical tradeoffs

Cost savings

Where an agency regards proposals as essentially equal, price may become the determinative factor in making an award notwithstanding that in the evaluation criteria cost was of less importance than technical considerations.

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Personnel experience

PROCUREMENT

Competitive Negotiation

Offers

Organizational experience

Evaluation

Propriety

Protest that agency failed to evaluate sea system experience of personnel as required by solicitation is denied where solicitation requirement for sea system experience applied to corporate experience, not experience of proposed personnel.

Protest is denied where there is no indication that alleged errors in evaluating proposals adversely affected the protester's competitive standing.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting officer findings
Affirmative determination
GAO review

Whether awardee will be able to perform contract using employees whose resumes were included in awardee's proposal is a matter of responsibility and General Accounting Office will not review agency's affirmative determination of awardee's responsibility absent showing of possible agency fraud or bad faith or alleged agency failure to apply definitive responsibility.

PROCUREMENT	B-226932.3; B-227310.2
Bid Protests	June 23, 1987
GAO procedures	87-1 CPD 622
Purposes	
Competition enhancement	

General Accounting Office will not consider allegations that more restrictive specifications are needed to serve the government's needs.

PROCUREMENT
Bid Protests
Moot allegation
GAO review

B-227108 June 23, 1987
87-1 CPD 623

Protest against award to other than low offeror is dismissed as academic since agency has terminated the contract because it does not reflect the government's minimum needs and the agency intends to resolicit the requirements using revised specifications.

PROCUREMENT
Bid Protests
Agency-level protests
Oral protests

B-227307 June 23, 1987
87-1 CPD 624

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

Protest is dismissed as untimely where protester made prior oral complaint but did not file written protest with contracting agency, and where protest to our Office was filed more than 10 working days after the basis for the protest was known.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-227841 June 23, 1987
87-1 CPD 625

Protester's contention that the agency improperly used an incomplete technical data package (TDP) for the procurement is dismissed as untimely since the state of completeness of the TDP should have been apparent upon protester's receipt of the RFP and protester did not submit its protest until after the contract was awarded to a competitor.

PROCUREMENT
Bid Protests
GAO procedures
Purposes
Competition enhancement

B-227841 Con't
June 23, 1987

Protester's contention that the product qualification tests it was required to conduct with respect to earlier procurements should be required of all offerors on current solicitation is dismissed because the objective of the General Accounting Office's bid protest function is to insure full and open competition for government contracts and the General Accounting Office, therefore, will not review a protest the purpose of which is to further restrict competition.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reversal
Additional information

B-224206.2 June 24, 1987
87-1 CPD 626

Prior decision sustaining protest of partial cancellation of a solicitation is reversed to deny the protest because the agency has provided information from two firms that competed under a prior procurement which indicates that reinstatement of the canceled portion of the solicitation and awards thereunder would prejudice other bidders or other potential bidders.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-225722.2 June 24, 1987
87-1 CPD 627

Request for reconsideration is denied when based on arguments that could have been, but were not, raised by protester in course of original protest.

PROCUREMENT

Bid Protests

B-225752.2 June 24, 1987

87-1 CPD 628

Allegation substantiation

Burden of proof

Mere disagreement with agency evaluation is insufficient to carry protester's burden of proof.

PROCUREMENT

Bid Protests

GAO procedures

Interested parties

A protester complaining that an agency improperly awarded a contract under a request for proposals (RFP) is not an interested party for purposes of maintaining a protest at the General Accounting Office merely because it had responded with an offer for the same product to a separate Broad Agency Announcement since the protester never responded to the RFP it was protesting.

PROCUREMENT

Contract Formation

Principles

Contract awards

Offers

Acceptance

B-226506; B-226594

June 25, 1987

87-1 CPD 629

The government does not award a contract merely by furnishing the bidder with a contract number, needed to obtain bonding, since such information does not indicate a clear, unconditional acceptance of the offer.

PROCUREMENT

B-226506; B-226594 'Con't'

Sealed Bidding

June 25, 1987

Contract awards

Propriety

Specification changes

A contract may not be awarded with the intent to change, immediately after award, specifications that clearly do not meet the government's needs.

PROCUREMENT

Sealed Bidding

Invitations for bids

Cancellation

Justification

An agency has a compelling reason to cancel an invitation for bids when specifications are inadequate in not setting forth a realistic delivery schedule and where certain other required specifications and drawings required by state and local authorities were not incorporated in the Invitation for Bids.

PROCUREMENT

B-226980 June 25, 1987

Sealed Bidding

87-1 CPD 630

Invitations for bids

Cancellation

Justification

Compelling reason exists for cancellation of a solicitation after bid opening where the record indicates that the specifications for ice cube making machines for naval shipboard use do not adequately describe the government's actual needs.

PROCUREMENT B-226980 Con't
Specifications June 25, 1987
Minimum needs standards
Determination
Administrative discretion

It is primarily the contracting agency's responsibility to determine its minimum needs, and the General Accounting Office will not question such a determination absent a clear showing that it was arbitrary or capricious.

PROCUREMENT B-227369.2 June 25, 1987
Bid Protests 87-1 CPD 631
Premature allegation
GAO review

Protest that agency improperly intends to deny award to protester because the agency requested that a preaward survey be performed on the protester is premature because the agency has not yet made its final decision on the protester's eligibility for award.

PROCUREMENT B-227407, et al.
Bid Protests June 25, 1987
GAO procedures 87-1 CPD 632
Protest timeliness
Apparent solicitation improprieties

Protest challenging alleged defect in solicitation is untimely where not filed before proposal due date.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
10-day rule

B-227407, et al. Con't
June 25, 1987

Protest is untimely where not filed until 3 months after protester received information from contracting agency pursuant to Freedom of Information Act which put protester on notice of grounds of protest.

PROCUREMENT
Bid Protests
Information disclosure
Administrative determination
GAO review

Authority to determine what information must be disclosed under the Freedom of Information Act is vested in contracting agency.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Direct interest standards

B-226777 June 26, 1987
87-1 CPD 633

A prospective supplier does not have the requisite interest to be considered an interested party to protest under the Competition in Contracting Act of 1984, since it is not a prospective or actual offeror.

PROCUREMENT B-226793.2 June 26, 1987
Contractor Qualification 87-1 CPD 634
Responsibility
Information
Submission time periods

PROCUREMENT
Contractor Qualification
Responsibility/responsiveness distinctions

A requirement that the bidder have a specific license or permit relates to responsibility, that is, capability to perform, and the bidder should be afforded a reasonable opportunity after bid opening to furnish evidence that it meets the requirement.

PROCUREMENT
Sealed Bidding
Invitations for bids
Amendments
Materiality

Amendment which contained historical data on the chemical composition of boiler soot for disposal is not material where under the terms of the original solicitation bidders assume the risk of disposing of the soot regardless of its content.

PROCUREMENT B-227032 June 26, 1987
Specifications 87-1 CPD 636
Minimum needs standards
Competitive restrictions
Design specifications
Justification

Protest that specification requiring a particular method for certain dam construction work is unduly restrictive of competition is denied, where protester disagrees with the agency about the merits of the method it proposes to use, but has not shown that the requirement is clearly unreasonable.

PROCUREMENT
Bid Protests
Federal grants
Contract awards
GAO review

B-227154 June 26, 1987
87-1 CPD 637

The General Accounting Office has no authority to review procurements by other than federal agencies, and also does not review complaints concerning the award of contracts under federal grants.

PROCUREMENT
Bid Protests
GAO procedures
GAO decisions
Reconsideration

B-225492.3 June 29, 1987
87-1 CPD 638

Where in request for reconsideration of a decision denying its protest, the protester fails to demonstrate legal error or provide any information not previously considered, but only reiterates arguments made and considered in the initial decision, the request for reconsideration is denied.

PROCUREMENT
Competitive Negotiation
Requests for proposals
Competitive restrictions
Domestic sources
Industrial mobilization bases

B-225728.2, et al.
June 29, 1987
87-1 CPD 639

Protest that agency improperly restricted procurement to domestic manufacturers is denied where item being procured is properly determined to be a defense mobilization item, and restriction therefore is required by governing regulations.

PROCUREMENT

B-226495.2 June 29, 1987

Bid Protests

87-1 CPD 640

GAO procedures

GAO decisions

Reconsideration

Request for reconsideration is denied where it merely reiterates prior arguments.

PROCUREMENT

B-226683 June 29, 1987

Bid Protests

87-1 CPD 641

Evidence evaluation

Factual issues

Discrepancies

Burden of proof

Protest contending agency never advised protester of cutoff date for revision of its proposal is denied where record shows agency informed protester it needed answers to questions by specific time and date to complete its evaluation of protester's proposal.

PROCUREMENT

Bid Protests

GAO procedures

Preparation costs

PROCUREMENT

Competitive Negotiation

Offers

Preparation costs

Protester is not entitled to recover proposal preparation costs or costs of filing and pursuing protest where protest is found to be without merit.

PROCUREMENT

B-226683 Con't

Bid Protests

June 29, 1987

GAO procedures

Protest timeliness

Apparent solicitation improprieties

A protest of the use of an oral solicitation and of deficiencies in the oral solicitation should have been filed prior to the proposal due date.

PROCUREMENT

Bid Protests

GAO procedures

Protest timeliness

10-day rule

Protest that proposal was improperly excluded from the competitive range is untimely when not filed with the contracting agency or General Accounting Office within 10 days after protester was notified of the reason for its exclusion.

PROCUREMENT

Competitive Negotiation

Discussion

Adequacy

Criteria

Protest that agency failed to hold meaningful discussions before eliminating proposal from competitive range is without merit where agency sent protester questions that should have led the protester into the areas of its proposal needing amplification, and protester was given opportunity to revise proposal with responses to these questions.

PROCUREMENT
Bid Protests
Allegation substantiation
Lacking
GAO review

B-227014 June 29, 1987
87-1 CPD 642

Where a protester fails to offer any evidence that the agency disclosed proposed prices to other offerors, its contention in this regard is mere conjecture and provides no basis to sustain a protest.

PROCUREMENT
Competitive Negotiation
Contract awards
Initial-offer awards
Propriety

In negotiated procurements, agencies must generally conduct written or oral discussions with all responsible offerors within the competitive range before awarding a contract. In limited circumstances, award may be made on the basis of initial proposals. However, even where the circumstances are present, award on the basis of initial proposals is permissive, not mandatory.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

Where an agency found no uncertainties in those offers included in the competitive range and determined that no technical discussions were necessary because of the high level of acceptability of offers, the agency's request for "cost only" best and final offers was sufficient to satisfy the requirement for discussions in a negotiated procurement.

GAO review

Protests of agency's termination of leases of housing units are dismissed since the agency's action involved a matter of contract administration not reviewed by the General Accounting Office.

Administrative discretion

As a general rule, an agency's source selection officials are afforded broad discretion in determining the successful offeror under a negotiated procurement, as long as the selection decision made is rationally based and consistent with the established evaluation criteria in the solicitation, and hence selection officials are bound neither by the technical scores assigned to the various proposals during evaluation nor by the recommendations of the technical evaluators.

Preparation costs

Claim for cost of filing and pursuing a protest is denied where protest is academic because improper award was terminated and using agency no longer has need for item.

PROCUREMENT
Contract Management
Contract administration
Contract terms
Compliance
GAO review

B-226796.2 June 30, 1987
87-1 CPD 647

Protest contending that a contractor that has failed to obtain the required approval of its pre-production samples should have its contract terminated for default is a matter of contract administration that General Accounting Office does not review under its bid protest function, since the administration of an existing contract is within the discretion of the contracting agency.

PROCUREMENT
Bid Protests
GAO procedures
Protest timeliness
Apparent solicitation improprieties

B-227088.3 June 30, 1987
87-1 CPD 648

A protest to a contracting agency alleging improprieties in a request for proposals is untimely when filed with the protester's proposal. It is not relevant that the protest was a separate letter from the proposal since the protest was enclosed in the same envelope as the proposal, because the contracting agency is not obligated to read or evaluate proposals until after the closing time.

PROCUREMENT
Bid Protests
GAO procedures
Interested parties
Suspended/debarred contractors

B-227835.2 June 30, 1987

General Accounting Office dismisses protest where debarment proceeding against the protester has been initiated, because pending a debarment decision, the firm is not eligible for award of a government contract.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS

B-223088 June 1, 1987

**Human Resources
Educational programs
Library services
Grants
Refunds**

Grantee under the Library Services Construction Act may be eligible for grant-backs of funds recovered by the Department of Education after final audit determinations under the General Education Provisions Act grant-back provision. 20 U.S.C. 1243e. These programs meet the two requirements of the statute and implementing regulations for eligibility. They satisfy the general definition of "applicable program" under the General Education Provisions Act and are subject to the Education Appeals Board's audit appeal jurisdiction.

MISCELLANEOUS TOPICS

B-227204 June 1, 1987

**Federal Administrative/Legislative Matters
Administrative policies
Records destruction
Time restrictions**

This Office has no legal objection to the proposal by the Department of Medicine and Surgery of the Veterans Administration to dispose of inactive Civilian Health and Medical Program (CHAMPVA) Sponsor Records maintained at Registration Centers 90 days after it is determined that the veteran and his or her dependents are ineligible for benefits and CHAMPVA Sponsor Records maintained at VA Medical Centers immediately upon determination that the veteran and his or her dependents are ineligible for benefits.

MISCELLANEOUS TOPICS B-227214 June 11, 1987

Federal Administrative/Legislative Matters

Administrative policies

Records destruction

Time restrictions

This Office does not concur in proposal by VA to dispose of microfilm copies of records relating to claims against veterans 25 years after the records' creation since it is unclear to us that the proposed retention period is adequate to protect the legal and financial interest of the Government.

MISCELLANEOUS TOPICS B-227239 June 11, 1987

Federal Administrative/Legislative Matters

Personnel

Drugs

Testing

Regardless of whether proposed language requiring that drug testing programs established pursuant to Executive Order 12564 comply with title 5 of the United States Code and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq. is added to the Supplemental Appropriations bill for fiscal year 1987, those laws and the protections developed thereunder would be applicable to Federal employees who test positive and are disciplined.

MISCELLANEOUS TOPICS B-226572 June 25, 1987
Environment/Energy/Natural Resources
Watershed projects
Alternatives
Statutory compliance
Authorizing legislation

Auburn Dam and Reservoir was authorized under Pub. L. No. 89-161, 79 Stat. 615, in 1965 as part of the Auburn-Folsom South Unit of the Central Valley Project, California. The Bureau of Reclamation of the Department of the Interior is now considering alternatives to constructing Auburn Dam and Reservoir as originally authorized. A substantial reduction in reservoir capacity would require new statutory authority. An accompanying change in the principal purpose of the Unit from irrigation water supply to flood control should also be made as part of the new authority. Institution of a new 25 percent cost sharing requirement for local non-federal entities for construction costs attributed to flood control would require new legislation.

MISCELLANEOUS TOPICS
Environment/Energy/Natural Resources
Watershed projects
Cost controls
Statutory restrictions

Auburn Dam and Reservoir was authorized under Pub. L. No. 89-161, 79 Stat. 615, in 1965 as part of the Auburn-Folsom South Unit of the Central Valley Project, California. The Bureau of Reclamation of the Department of the Interior in April 1986 estimated the authorized construction ceiling, adjusted for inflation, to include approximately \$144 million because of subsequent legislative requirements. This amount should be deducted from the cost ceiling since the only basis for increasing it is for inflationary cost increases. There is no authority to do so because of additional requirements of subsequent legislation which does not provide additional authorization of appropriations. See B-223725, February 20, 1987.

MISCELLANEOUS TOPICS

B-225343 June 26, 1987

Housing/Community Development

Low-income housing

Court decisions

GAO review

Although Gillanders v. Smith, an unreported 1986 District Court memorandum decision granted a preliminary injunction to enjoin private defendants from evicting low-income tenants from certain section 515 subsidized apartment buildings even though loans were made before December 21, 1979, this ruling does not constitute a ruling on the merits of the case and is of no precedential value but was issued to lessen economic hardship on tenants prior to jury trial on issue of whether FmHA can refuse prepayments. GAO may report on issues raised by case but should not express opinion on issues raised prior to decision.

Under the section 515 Housing Program, the income of tenants would not be considered with regard to post-1979 loans only where prepayment sought prior to 15 or 20 period and then only to determine if need still exists for such housing.

Despite the general policy in Housing Act against displacement of tenants, there is no specific prohibition on accepting or requesting loan prepayments that would lead to displacement of tenants where prepayment would otherwise be authorized. It is unclear if conflicting policy under 42 U.S.C. 1472(b)(3), requiring refinancing or graduation whenever Secretary determines borrowers income or earning capacity would make him eligible for financing from private credit sources, applies to section 515 loans.

MISCELLANEOUS TOPICS

B-225343 Con't

Housing/Community

June 26, 1987

Development

Low-income housing

Government-insured loans

Repayment plans

Statutory restrictions

Section 502(c)(1) of the Housing Act of 1949, 42 U.S.C. 1472(c)(1), generally prohibits FmHA from accepting prepayment of section 515 (rural housing loans), approved after December 21, 1979, unless it takes action to obligate the borrower to utilize the assisted housing for the same purpose, for a period of 15 years or 20 years, depending upon how the project is financed. At any time, Secretary of Agriculture may permit other uses of prepaid property if he determines no need exists for such housing or that Federal or other financial assistance provided to the residents of such housing will no longer be provided.

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